



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*86 Chambers Street, Third Floor  
New York, New York 10007*

January 28, 2022

**By ECF**

The Honorable Lewis J. Liman  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Center for Biological Diversity, et al. v. U.S. Fish and Wildlife Service, et al.*, 21  
Civ. 5706 (LJL)

Dear Judge Liman:

With Plaintiffs' consent, I write respectfully, on behalf of the Government, to make two requests with respect to the filing of the administrative record in the above-captioned matter, which is due to be filed on February 2, 2022.

First, the Government respectfully requests the Court's leave to file a copy of the administrative record with the Clerk of Court in the Southern District of New York rather than file a copy on ECF. Although the record is still in the process of being finalized, the Government anticipates that it will be over 400 MB in size, much larger than the 10 MB limit imposed on ECF filings. Should the Court permit filing with the Clerk of Court, the Government will also provide the Court a copy of the record on a compact disc, unless the Court prefers access via the Government's USAfx file transfer system. The Government will provide Plaintiffs with a copy of the record via USAfx. The Government intends to file the record certification and index on ECF.

Second, the record contains certain documents that are subject to copyright protections that do not permit them to be publicly filed, such as published journal articles. The Government respectfully requests the Court's leave to file these materials under seal (with the Clerk of Court, given that the file size of just the copyrighted materials is still too large to file on ECF), with access restricted to the Court and to the parties to this matter, in order to balance the need for access against the legal restrictions imposed by the Copyright Act. *See* Leland E. Beck, *Report to the Administrative Conference of the United States: Agency Practices and Judicial Review of Administrative Records in Informal Rulemaking* 50-52 (2013).<sup>1</sup> The Government also requests that the Court direct that the copyrighted materials may be used only for purposes of this

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<sup>1</sup> Available at [https://www.acus.gov/sites/default/files/documents/Agency Practices and Judicial Review of Administrative Records in Informal Rulemaking.pdf](https://www.acus.gov/sites/default/files/documents/Agency_Practices_and_Judicial_Review_of_Administrative_Records_in_Informal_Rulemaking.pdf).

litigation. *See* Fed. R. Civ. P. 26(c)(1) (permitting the imposition of limitations on disclosure). Although the Government is not requesting that Plaintiffs or the Court be precluded from citing copyrighted materials in public filings or rulings, the Government expressly disclaims liability for Plaintiffs' or the Court's use of these materials.

Counsel for Plaintiffs consent to the requests.

We thank the Court for its consideration of these requests.

Respectfully submitted,

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cc: **By ECF**  
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